

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED
JUL - 3 2008
Federal Communications Commission
Office of the Secretary

In the Matter of)
Federal-State Joint Board on Universal)
Service)

H&B Cable Service, Inc.)

Petition for Waiver of Section 54.809)
of the Commission's Rules)

CC Docket No. 96-45

WC 08-71

To: Wireline Competition Bureau

**H&B CABLE SERVICE, INC.
PETITION FOR WAIVER OF SECTION 54.809
OF THE COMMISSION'S RULES**

H&B Cable Service, Inc. ("H&B Cable"), by counsel and pursuant to 47 C.F.R. § 1.3 requests a waiver of Section 54.809, 47 C.F.R. § 54.809, of the Commission's Rules. Specifically, H&B Cable requests waiver of the June 30, 2006 Carrier Certification filing deadline set forth in 47 C.F.R. § 54.809(c) to enable H&B Cable to receive Interstate Access Support (IAS) for the eligible subscriber lines reported on the June 30, 2006; September 29, 2006; December 29, 2006; and March 30, 2007 IAS line count reports.

Due to an oversight by the third-party vendor hired by H&B Cable to prepare its quarterly line count reports and annual certifications, H&B Cable's June 30, 2006 annual IAS Carrier Certification required by § 54.809(a) for receipt of IAS was not filed with the Office of the Secretary of the Commission and the Universal Service Administrative Company (USAC) as required by § 54.809(c). As a result H&B Cable did not receive IAS during the period July 2006 through June 2007 for its eligible subscriber lines.

08-71

For the reasons set forth below, waiver of the June 30, 2006 filing deadline set forth in Section 54.809(c) of the Commission's Rules will permit H&B Cable to receive the IAS to which it is otherwise entitled, serve the public interest and benefit consumers in rural and high-cost areas of Kansas.

I. BACKGROUND

H&B Cable is designated an Eligible Telecommunications Carrier ("ETC") for certain service areas within the State of Kansas.¹ To comply with the quarterly line count and certification filing requirements set forth in this Commission's Rules, H&B Cable engaged Fred Williamson & Associates, Inc. ("FWA"), an experienced third-party consulting vendor, to prepare and file the required line count reports and certifications on behalf of H&B Cable.

Due to an administrative oversight by FWA, the June 30, 2006 annual IAS Certification was not filed with the Secretary of the Commission or USAC. As a result, H&B Cable received no IAS funding between July 1, 2006 and June 30, 2007.

II REQUEST FOR WAIVER

The Commission's Rules expressly provide for waiver of any Rule if good cause is first established. 47 C.F.R. § 1.3. Consistent with this Rule, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *See, Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

In this case, strict adherence to the Carrier Certification filing requirements set forth in Section 54.809 would prevent H&B Cable from receiving IAS for its eligible subscriber lines.

¹ *See*, Final Orders Granting ETC Designation; *Application of H&B Cable Service, Inc. for Designation as an Eligible Telecommunications Carrier*; Kansas Corporation Commission ("KCC"), Order dated October 25, 2004; *Also*, *Application of H&B Cable Service, Inc. for Designation as an Eligible Telecommunications Carrier*; KCC Order dated October 03, 2006

Thus, H&B Cable would not receive timely and appropriate universal service support payments, even though the carrier was properly designated as an ETC, providing the supported services to Kansas consumers and performing all of the obligations of an ETC. Granting the requested waiver will avoid this inequitable result and benefit these Kansas consumers by promoting the provision of universal service.

A. The Limited Waiver H&B Cable Seeks Will Advance the Commission's Universal Service Goals

Granting H&B Cable's request for waiver of the Carrier Certification filing requirements set forth in Section 54.809(c) will further the Commission's public policy goals of bringing access to competitive telecommunications services to all citizens by enabling H&B Cable to receive support for the provision, maintenance, and upgrading of facilities and services commensurate with its service as a competitive ETC. Without access to this support, H&B Cable would be stifled in fulfilling the goals of the Telecommunications Act of 1996: "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996).

The Commission has further determined that "competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications."² Denying H&B Cable IAS because the carrier's June 30, 2006 IAS Carrier Certification was not filed timely would undermine the Commission's goal of competitive neutrality.³ Universal service funding is

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, 15 FCC Rcd 12208, 1264-65, para. 114 (2000), (1999), rev'd in part and remanded in part, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

³ See *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580 (WCB 2004) ("Grande Order").

vital to H&B Cable's ability to carry out its mission as a competitive ETC in Kansas because it allows the carrier to pursue the construction and upgrading of its network to better serve customers within its designated ETC service areas. H&B Cable's customers should not be denied support as a result of a delay that presents only minimal administrative efforts to correct.

B. The Limited Waiver H&B Cable Seeks is Consistent with Commission Precedent

The Commission has often granted petitions for waiver of certain ETC filing Deadlines to facilitate an ETC's receipt of universal service support. The limited waiver that H&B Cable seeks in this proceeding is consistent with and supported by the Commission's prior decisions.

For example, the Wireline Competition Bureau, on August 14, 2006 in DA06-1632, granted North Dakota Cellular of North Dakota's Limited Partnership petition for a wavier of the data submission reporting requirement rules in Section 54.307.⁴ Consistent with the petition granted by the Wireline Competition Bureau in the North Dakota Cellular case, H&B Cable's instant additional request for a waiver of a filing deadline is equally warranted in that H&B Cable could not have foreseen that its consulting vendor would fail to complete a required form by the deadline. Additionally, FWA has assured H&B Cable that appropriate measures have been implemented to assure future filing deadlines are met.

In an earlier precedent in March, 2001 the Commission granted the State of West Virginia's petition for waiver of the annual certification requirement for non-rural ETCs.⁵ The Commission reasoned that "*the potential harm that would be suffered by customers [of the ETC] justifies a*

⁴ *Northwest Dakota Cellular of North Dakota Limited Partnership, et al. Petition for Waiver of Section 54.307 of the Commission's Rules*, Order, 21 FCC Rcd 9179 (2006)

⁵ *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, , Order, 16 FCC Rcd 5784 (2001).

waiver” and found that the loss of three months worth of universal service funding in similar circumstances would be “egregious.”⁶

More recently, the Wireline Competition Bureau granted United States Cellular Corporation’s (“US Cellular”) petition for waiver of the filing deadlines for two separate reporting periods.⁷ As a result of US Cellular’s confusion regarding Commission rule changes and ETC obligations, the company did not file two of its line count reports in a timely fashion.

Unlike the H&B Cable case, US Cellular retained complete control over the filing of its line count reports, and due to internal confusion regarding the Commission’s rules, failed to timely file the reports. In contrast, for H&B Cable it was the consulting vendor who failed to complete the annual IAS certification in a timely manner. Under such circumstances, the Commission should find that H&B Cable is equally, if not more, deserving of relief from strict enforcement of the rules and the Commission should find that good cause exists in this case to grant H&B Cable’s requested waiver.

C. The Limited Waiver H&B Cable Seeks Will Serve the Public Interest

The public interest will be served by granting H&B Cable’s request for waiver of the June 30, 2006 filing deadline. As previously discussed, H&B Cable has been designated as an ETC by the KCC, thus reflecting the KCC’s judgment that these designations serve the public interest. H&B Cable’s receipt of high-cost universal service support is essential to the maintenance and provision of the supported services in rural and high cost areas in Kansas. As noted above, the Commission consistently has acknowledged the public interest in granting waivers to ensure ETCs’ receipt of support, under appropriate circumstances, despite inadvertent failures to meet USAC filing deadlines. Similarly, it would be inequitable to deny H&B Cable’s universal service

⁶ *Id.* (emphasis added).

⁷ *Federal-State Joint Board on Universal Service, United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission’s Rules and Regulations, Order, 19 FCC Rcd 12418 (WCB 2004).*

support due to the failure of a third party vendor to timely complete an annual IAS Carrier Certification. Moreover, H&B Cable has been assured that FWA has taken appropriate steps to assure the appropriate certifications will be timely filed in the future.

III. CONCLUSION

For the foregoing reasons establishing good cause, the Commission should grant H&B Cable's request for waiver of the annual Carrier Certification filing requirement set forth in 47 C.F.R. § 54.809 and allow H&B Cable to receive IAS for the Companies' designated service areas in Kansas for the lines to which they are entitled.

Respectfully submitted,

David Cosson
Attorney for H&B Cable Service, Inc.

2154 Wisconsin Ave., N.W.
Washington, D.C. 20007

202 333 5275

July 1, 2008